
OPINION OF THE PUBLIC ACCESS COUNSELOR

CHAD R. CARMICHAEL,
Complainant,

v.

HAMILTON SOUTHEASTERN SCHOOLS,
Respondent.

Formal Complaint No.
21-FC-72

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that Hamilton Southeastern Schools violated the Access to Public Records Act.¹ Attorney Alexander Pinegar filed a response on behalf of the School District. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 10, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the reasonable particularity of a request for emails, and the methods used to search for responsive records.

On April 26, 2021, Chad R. Carmichael (Complainant) emailed a records request to the Director of School and Community Relations for the Hamilton Southeastern Schools (HSE), seeking the following:

Full video recording of the “Awareness, Advocacy, and Allyship” event held by Ms. Pettigrew on April 22, 2021, and briefly posted on the internet.

All emails or communications sent to or from Naktaki Pettigrew² in the month of April 2021 which mention this event or the content of the discussion at this event, or which mention the removal of this video from the internet, or the grounds for the removal of this video from the internet.

Meeting minutes which mention any of the above.

On May 6, 2021, HSE provided Carmichael a copy of the requested video. A month later HSE sent Carmichael 342 pages of emails meant to fulfill the remainder of the request.

Carmichael questioned HSE’s reasons for providing those particular emails, which he argues were irrelevant to his request. HSE responded by stating that the request was not reasonably particular because it did not identify a particularized subject matter or search terms. Specifically, HSE informed Carmichael that since he did not identify search

² Pettigrew is the chief equity and inclusion officer for HSE schools.

terms in his request, the district's attorney advised HSE to pull emails mentioning the terms "Awareness," "Advocacy," and "Allyship." Carmichael dismisses HSE's assessment, claiming his request included enough information to identify responsive records.

On June 9, 2021, Carmichael filed another records request with particularized terms, which included named senders and recipients. Carmichael filed a formal complaint with this office the same day.

On June 30, 2021, HSE filed an answer to Carmichael's complaint arguing its response to the initial request was appropriate.

HSE maintains that Carmichael's request was not reasonably particular. Still, HSE asserts that it took the search into its own hands and found 342 responsive emails using its own search metrics. HSE claims it did so as Carmichael's request failed to identify a named sender or named recipient and failed to identify a particularized subject matter or a reasonable number of search terms.

With only a single account name and a timeframe, HSE contends that it was forced to search all of Ms. Pettigrew's email account to locate potentially responsive emails. HSE asserts that based on the broad nature of the request, the district had to do their best to fulfill the request by selecting "Awareness, Advocacy, and Allyship" as search terms because it was the name of the event Carmichael's request referenced.

ANALYSIS

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. Hamilton Southeastern Schools (HSE) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy HSE’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Requests for Emails

It is no secret that crafting a request for emails is an art of sorts. This office and the courts have attempted to demystify that process to ease the burden on requestors and the receiving agency so that requests are not unruly or impractical.

This has not been an exercise in legislating from the administrative or judicial branch of government, but rather interpreting what the legislature intended by the “reasonable particularity” standard required of a request in Indiana Code section 5-14-3-3(a)(1).

The term reasonable particularity is not defined further in Indiana Code, much less how it applies to emails. Even so, this office has addressed the issue. Former Public Access Counselor Joe Hoage opined that “e-mail is a method of communication and not a type of record; requests for records that only identify the records by method of communication only are not reasonably particular.” *Opinion of the Public Access Counselor*, 12-FC-44 (2012).

Hoage went on to suggest that a reasonably specific email search entailed the identification of a named sender and recipient within a time frame. This “channel” of communication is the ecosystem where responsive emails can then be identified.

To that end, when the complainant in that case appealed, the court in *Anderson v. Huntington County Bd. of Com’rs*, 983 N.E.2d 613, (Ind. Ct. App. 2013) agreed with Hoage and set the named sender and recipient with a time frame parameters as binding precedent.

In the years since, this office has built on those search parameters within the “channels” of communication with factors including a time frame suggestion of six months or less, and a subject matter or key word list to give the agency an idea how to search.

Reason being that efficient and precise requests yield timely and wieldy responses.

2.1 Carmichael's request

Initially Carmichael's request omitted some critical information described above, notably a specific "channel" of communication.

Typically, a request for emails without two identified parties is a nonstarter and the agency can rightfully deny the request or invite the requestor to provide more information. While the other factors (e.g., timeframe and subject matter) are somewhat fungible, the identified parties are usually not.

Nevertheless, HSE commenced the search with the information had at its disposal. It reasonably presumed the subject matter Carmichael was interested in and searched the entirety of the employee's account for that topic.

After review of the emails produced, it appears HSE satisfied the request. While the response had some duplication, it is unclear what else Carmichael lacks in terms of information. There is a likelihood that the response is the whole of what is available.

The public often presumes that a tidy timeline and narrative of an initiative or program will be conveniently memorialized and archived in emails for eventual consumption. The reality is that public employees communicate in a multitude of ways – face-to-face, telephonically, etc. – and communication does not always manifest as a public record. There is no requirement or expectation that all manner of interactions be recorded or documented.

Since this office does not take testimony or evidence under oath, we are sometimes left to make inferences based on the circumstances and information provided. In this case, it appears HSE provided the materials responsive to the Carmichael's initial request.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Hamilton Southeastern Schools did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor